

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	12-0212
Certification Requirements	:	
Applicable to Vendors that Install	:	
Electric Vehicle Charging Stations.	:	

PROPOSED SECOND NOTICE ORDER

DATED: March 14, 2013

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By the Commission:

I. BACKGROUND

On November 8, 2012, the Illinois Commerce Commission ("Commission") entered a First Notice Order authorizing the submission to the Secretary of State of the first notice of the proposed rule at 83 Ill. Adm. Code 469, "Certification for the Installation, Maintenance or Repair of Electric Vehicle Charging Stations" ("Part 469"). The proposed rule implements the recently enacted and amended Section 16-128A(d) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq. Generally, this statutory provision directs the Commission to adopt a rule establishing certification requirements applicable to persons or entities that install, maintain, or repair electric vehicle ("EV") charging stations in Illinois. The statute also requires that the rule be "in accordance with the requirements of subsection (a) of Section 16-128 of the Act." Section 16-128(a) of the Act addresses the knowledge, skill, training, experience, and competence levels required of employees that perform work on "the electric system" on behalf of electric utilities and alternative retail electric suppliers.

The first notice rule was developed through workshops open to the intervenors in this proceeding. The intervenors are: Commonwealth Edison Company ("ComEd"); Ameren Illinois Company ("AIC"); Mt. Carmel Public Utility Company; MidAmerican Energy Company; Citizens Utility Board; Environmental Law and Policy Center; Illinois Solar Energy Association; Associated Builders and Contractors, Illinois Chapter, Inc. ("ABC"); Local Union 51, IBEW, AFL-CIO ("IBEW"); and the Illinois Chamber of Commerce ("Chamber"). The Attorney General and City of Chicago also entered appearances. Commission Staff ("Staff") participated as well. Although the support of those involved in drafting the first notice rule was not unanimous, the parties agreed that the version of the rule sponsored by Staff was generally acceptable for use as a first notice rule. No hearings were held nor testimony taken regarding the substance of the first notice rule.

The proposed rule was published in the *Illinois Register* on November 26, 2012, initiating the first notice period pursuant to Section 5-40(b) of the Illinois Administrative

Procedure Act ("IAPA"), 5 ILCS 100/1-1 et seq. On January 10, 2013, ComEd, AIC, ABC, and the Chamber each submitted comments. On January 17, 2013, IBEW and Staff each submitted reply comments. Thereafter, the Administrative Law Judge issued a ruling on February 21, 2013 directing Staff to provide language for the rule satisfying the requirements of Section 16-128A(d)(12) of the Act. Neither the first notice rule nor any of the comments addressed the requirements of subsection (d)(12). Staff offered language in response to the ruling on March 1, 2013. The February 21, 2013 ruling encouraged other parties to offer language as well and provided an opportunity for parties to respond to Staff's language, but none chose to avail themselves of these opportunities. A Proposed Second Notice Order was served on the parties. With the appropriate rule language ascertained and with the end of the statutorily-mandated first notice period, the Commission can submit the second notice of the proposed rule to the Joint Committee on Administrative Rules ("JCAR").

II. SECTION 469.10 DEFINITIONS

Section 469.10 contains definitions for various terms used in Part 469. The only definition in dispute is for the term "qualified person." In its March 1, 2013 filing, however, Staff proposes the addition of six new terms and definitions to satisfy the Section 16-128A(d)(12).

A. Qualified Person

Section 469.10 in the first notice rule defines "qualified person" as:

"Qualified person" means a person who performs installation, maintenance or repair of electric vehicle charging stations and who has completed an apprenticeship as a journeyman electrician from a United States Department of Labor Registered Electrician Apprenticeship and Training Program and received a certification of satisfactory completion.

1. ABC Position

ABC maintains that the first notice rule definition of "qualified person" is unduly narrow and not required by the applicable statute. ABC contends that there are suitable means available for training, other than solely through a United States Department of Labor ("DOL") registered apprenticeship program, that fulfill the legislative requirements and that will not unjustifiably shut the door on the ability of otherwise qualified contractors to perform this work. ABC states that Section 16-128(a) expressly recognizes that competence for installing EV charging stations can be obtained through any recognized apprenticeship program or through specified and several years of employment performing a particular work function that is utilized by an electric utility. Clearly, ABC argues, the current proposal to limit certification to completion of or participation in a DOL registered apprenticeship program is not supported by the relevant statutory provisions and will only serve to provide an artificial advantage to certain contractors.

Furthermore, ABC stresses that the proposed rulemaking improperly creates independent State standards inconsistent with and not supported by federal law. ABC explains that the federal apprenticeship regulations expressly recognize that employees may be adequately trained through on the job experience and can reach journeyman status without ever participating in or completing an apprenticeship program. ABC cites the definition of "journeyworker" in Section 29.2 of Part 29 "Labor Standards for the Registration of Apprenticeship Programs" of Title 29 "Labor" of the Code of Federal Regulations. Section 29.2 defines "journeyworker" as follows:

Journeyworker means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.)

ABC contends that the certification requirement should be defined to include that vehicle charging stations be installed by an electrical contractor that has a current license from an Illinois municipality and whose employees performing the work have (at a minimum) passed the Underwriters Laboratories ("UL") EV charging station installation certification program. ABC states that there is no dispute that UL is recognized as the gold standard of setting forth electrical safety standards in the United States and has specific standards in place for the installation of vehicle charging stations. The Commission should therefore recognize, ABC asserts, licensed electrical contractors whose employees performing installations have completed the UL EV charging station installation certification program as being "certified" to install vehicle charging stations. Including this form of certification, ABC concludes, will meet the statutory criteria involving apprenticeship training and/or experience, and will increase the number of qualified contractors able to perform this type of work.

2. Chamber Position

The Chamber argues that the proposed definition of "qualified person" in the first notice rule is too narrow and not based in real-world needs. In the Chamber's opinion, relying solely on DOL registered apprenticeship programs to qualify people to install EV charging stations – some of which are as simple as installing washer/dryer outlets in garages – would create a huge impediment to the growth of the EV market in Illinois. After having conducted some amount of research, the Chamber indicates that no other state in the country requires such a level of qualification for EV charging station installation. To address some of these concerns, the Chamber recommends adopting the suggestions submitted by ABC because they offer sound ideas that balance safety with common-sense commerce.

The Chamber recognizes that similar arguments made in Docket No. 12-0213 were rejected by Staff in subsequent comments. The Chamber appreciates the implied logic behind the Staff's point of view but implores Staff to reconsider its reading of the statute and be open to broader interpretations. The Chamber insists that solely relying on DOL trained installers to handle or oversee what everyone hopes will be a growing number of installations will only raise the cost to consumers, harm small businesses that have been conducting installations safely for years, and curtail the growth of the EV market in Illinois. The Chamber does not believe that such was the intent of the parties that negotiated the legislation at issue.

3. IBEW Position

According to IBEW, Section 16-128(a), together with Section 16-128A, establishes that persons or entities who perform the work of installing, repairing or maintaining an EV charging station must, as a minimum qualification threshold, possess the knowledge, skill, training, experience, and competence levels required by electric utilities of their employees as of January 1, 2007. The statute further prescribes that an employee may meet that minimum threshold by having completed or being a participant in "an accredited or otherwise recognized apprenticeship program for the particular craft, trade or skill." To the best of IBEW's knowledge and belief, employees of Illinois utilities in January of 2007 were mostly participants in or graduates of DOL registered electrical apprenticeship programs. IBEW states that such programs provide thorough training and hands-on experience with electrical work over a multi-year course of work and study. Although IBEW concedes that Section 16-128(a) does not stipulate a DOL registered electrical apprenticeship program, it contends that that is, in fact, the type of apprenticeship program that was completed by individuals employed by Illinois utilities in 2007 and it is the type of apprenticeship program completed by employees of Illinois utilities today.

The "craft, trade or skill" associated with installation, maintenance, and repair of EV charging stations is unequivocally and undisputedly "electrical work," for which, IBEW believes, the best preparation is participation in and successful completion of a DOL recognized electrical apprenticeship program. IBEW asserts that the alternative UL certification put forward by ABC is not an electrical training program at all, let alone an apprenticeship program, but rather a 2.5 hour self-paced (i.e., independent study) course followed by an online test. IBEW contends that such a 2.5 hour self-taught course plainly can not ensure that its certificants possess the knowledge, skill, training, experience, and competence levels required by electric utilities of their employees as of January 1, 2007.

There is no question from IBEW's perspective that the DOL registered electrical apprenticeship programs in Illinois are sufficient to meet the need for individuals qualified to install, maintain, and repair EV charging stations. In response to the Chamber's assertion that relying solely on DOL registered apprenticeship programs to supply qualified persons would create a huge impediment to the growth of the EV market in Illinois, IBEW states that with more than 17 DOL registered electrical

apprenticeship programs currently training electricians in Illinois (including one in the Chicago area that graduates approximately 200 apprentices each year and another operated by ABCIL itself), it is difficult to see any impediment to growth. Because no one has provided data concerning the number of individuals who actually possess the proffered UL certification, IBEW indicates that it is impossible to determine whether deeming those people qualified would increase the number of qualified persons.

IBEW denies that any conflict with federal law exists. IBEW states that Illinois is free to establish regulations in this area. Contrary to ABC's insinuation, IBEW insists that a federal regulation defining "journeyworker" has no effect on the legislature's ability to establish standards of knowledge, skill, training, experience, and competence for individuals whose work directly affects the provision of electrical service to the citizens of the state. In fact, to the extent the Commission wishes to establish a rule that is consistent with federal standards as well as Section 16-128(a), IBEW asserts that the federal regulations cited by ABC provide an instructive definition of apprenticeship program. Because Illinois maintains no state apprenticeship agency of its own, IBEW contends that it is entirely appropriate to look to federal standards concerning apprenticeship in order to flesh out state legislation.

4. Staff Position

Staff does not necessarily disagree with ABC's argument that the first notice rule's definition of "qualified person" creates independent State standards inconsistent with and not supported by federal law. In Staff's view, the legislature is in fact requiring Staff to create independent State standards, regardless of whether they are consistent or inconsistent with or supported by federal law. If ABC is arguing preemption, Staff states that ABC must go to a court of competent jurisdiction to make that argument. Because the Commission is a creation of the legislature and bound by the acts of the legislature, Staff asserts that it is not free to preempt the directives of the legislature. (See City of Chicago v. Illinois Commerce Commission, 79 Ill. 2d 213, 217-18 (1980), and Illinois Bell Telephone Co. v. Illinois Commerce Commission, 203 Ill. App. 3d 424, 438 (1990))

Under the first notice rule, to receive certification an entity would be required to demonstrate and certify that its' employees are qualified persons. Staff understands ABC's proposal as recommending that an electrical contractor that has passed a UL offered installation examination be a qualified person. Staff can accept ABC's recommendation and does not disagree that an electrical contractor that passes a sufficiently rigorous UL charging station installation examination could demonstrate a reasonable level of competence in installing charging stations. Staff does not agree however, that ABC's recommendation demonstrates that the electrical contractor would have actual experience installing charging stations. Thus, Staff recommends that, in addition to passing a UL offered installation examination, the electrical contractor would also be required to furnish proof that it has installed a charging station under the direct supervision of a qualified person. If these recommendations are accepted, Staff states that the definition of "qualified person" should read as follows:

"Qualified person" means a person who performs installation, maintenance or repair of electric vehicle charging stations and who either (1) has completed an apprenticeship as a journeyman electrician from a United States Department of Labor Registered Electrician Apprenticeship and Training Program and received a certification of satisfactory completion or (2) is an electrical contractor who has a current license from at least one Illinois municipality, who has passed a charging station installation examination offered by Underwriters Laboratory (UL) and who has successfully installed at least one charging station under the direct supervision of a qualified person.

5. Commission Conclusion

Because of competing interpretations of the statute, ambiguities in some statutory language, and practical matters, the determination of which entities are qualified to install, maintain, or repair EV charging stations will not be simple. As an initial matter, IBEW's insistence on the presence of an apprenticeship program among the qualifications warrants discussion. Generally, IBEW members participate in an apprenticeship program as part of their job training. "Apprenticeship" clearly has a particular meaning to IBEW and IBEW insists that the same meaning is what is intended by the statutory language of Section 16-128(a). IBEW concedes that Section 16-128(a) does not stipulate a DOL registered electrical apprenticeship program, but contends that employees of Illinois utilities in January of 2007 were mostly participants in or graduates of such programs. While the Commission is free to adopt the same DOL registered electrical apprenticeship and training program that IBEW supports, the Commission is not required to do so since Section 16-128(a) does not specifically call for such. Had the legislature intended for the Commission to rely on the DOL registered program and no other, the legislature is capable of saying so. Nor is the Commission persuaded that the reference in Section 16-128(a) to the training standards of utility employees as of January 1, 2007 requires the adoption of the DOL registered apprenticeship program. The statute requires the training of entities to be "consistent" with the training of utility employees as of January 1, 2007. It is possible to be consistent with the standards to which utility employees were held as of January 1, 2007 without being identical.

In the absence of express statutory direction as to what meaning to assign to "apprenticeship program," the Commission must ascertain a reasonable meaning which will aid in identifying qualified entities. Fortunately, the offered comments can assist in this endeavor. Generally, an apprentice is a beginner in a particular field or trade who learns the trade through academic instruction and on-the-job training; such learning can be considered an apprenticeship program. In evaluating the available training programs, it is important to note that none of those participating in this rulemaking entirely discredit the referenced DOL registered electrical apprenticeship and training program. From the information provided, the Commission finds that the DOL program can provide training for EV installations, maintenance, and repairs. But the duration of the program dissuades the Commission from adopting it as the sole means of being

considered qualified under Part 469. Fortunately, the comments indicate that the UL EV charging station installation certification program is also available. If the UL program requires a lab or field component where students can obtain hands-on experience with EV charging station technology, this would arguably be consistent with on-the-job training. The Commission finds such programs to be sufficient apprenticeship programs consistent with Sections 16-128A(d)(13) and 16-128(a).

An additional area of concern for determining who should be considered qualified to install, maintain, or repair EV charging stations stems from ABC's comments. ABC states that Section 16-128(a) expressly recognizes that competence for installing EV charging stations can be obtained through any recognized apprenticeship program or through specified and several years of relevant employment. ABC also contends that requiring only formal training is inconsistent with a federal law that recognizes that experience can be gained outside of a formal training program. The first notice rule does not take into account any alternative path to qualification. The legislature arguably recognized through the "specified and several" provision in Section 16-128(a) two concepts: first, already experienced entities should not be restricted from the marketplace simply because they learned their trade and gained their experience outside of an accredited or recognized program prior to Part 469 taking affect; and second, an entity can learn the trade and gain experience outside of an accredited or recognized program even after Part 469 takes affect. Ignoring either of these concepts would render the statutory language meaningless, which is contrary to the principles of statutory interpretation and construction. While several years of relevant employment could be made part of the definition of "qualified person," doing so does not seem practical given the nascent state of the EV market. Because specifying a minimum number of installations is more definitive and provides more assurance of competency by an entity, the Commission finds that an alternative path to qualification based on a minimum number of installations is permissible as a higher standard than what the Act requires. Unfortunately, no commenter, not even ABC, has identified a specific number of installations that should be necessary to be considered qualified. In the currently pending rulemaking considering similar rules for installers of distributed generation facilities (Docket No. 12-0213), however, the Commission has considered five installations to be appropriate. In light of the need to comply with Section 16-128A(d)(13) and the absence of any proposal by a commenter, the Commission will adopt five installations as a sufficient minimum level of experience before considering a person qualified to install, maintain, or repair EV charging stations on their own. Only actual installations will be considered in this regard because maintenance and repairs may not provide sufficient experience to gain competency for the scope of work that may be involved.

In order to reflect the statute's emphasis on the substance of the training over the form of the training, the Commission finds that the following definition of "qualified person" will be adopted for purposes of Part 469:

"Qualified person" means a person who performs installation, maintenance or repair of electric vehicle charging stations and who has

either satisfactorily completed at least five installations of an electric vehicle charging station or has completed at least one of the following programs requiring lab or field work and received a certification of satisfactory completion: (1) an apprenticeship as a journeyman electrician from a United States Department of Labor Registered Electrician Apprenticeship and Training Program or (2) an Underwriters Laboratories (UL) electric vehicle charging station installation certification program. and received a certification of satisfactory completion.

In addition, the Commission finds that this broader definition should support the EV market and foster work force development in Illinois.

B. Additional Definitions

Pursuant to Section 16-128A(d)(12), Part 469 must "ensure that all persons or entities that install, maintain, or repair electric vehicle charging stations obtain certificates of insurance in sufficient amounts and coverages that the Commission so determines and, if necessary as determined by the Commission, names the affected public utility as an additional insured." As mentioned above, the first notice rule contained no such requirement and the comments on the issue were similarly silent. To remedy this deficiency, Staff proposes in its March 1, 2013 filing to add six new terms and definitions as well as additional language to Section 469.40. The six new terms and definitions are:

"Best's financial size category" refers to a numerical value that A.M. Best Company or its successor assigns to an insurance company based on the amount of that insurance company's policyholders' surplus and reserve funds.

"Best's rating" refers to a rating from A.M. Best Company or its successor that provides an overall opinion of an insurance company's ability to meet its obligations to policyholders.

"Commercial general liability insurance" means insurance that covers suits against the insured for personal injury and property damages.

"Premises and operations insurance" coverage pays for bodily injury or property damage that occurs on your premises or as a result of your business operations.

"Products and completed operations insurance" coverage pays for bodily injury and property damage that occurs away from your business premises and is caused by your products or completed work.

"Surplus Line Association of Illinois" is an organization of Illinois surplus line producers as defined in Section 445.1 of the Illinois Insurance Code [215 ILCS 5/445.1].

Staff's proposed additional language for Section 469.40 uses these terms. No one has objected to the addition of these terms to Section 469.10. The Commission finds them reasonable and will incorporate them into Part 469.

III. SECTION 469.20 APPLICABILITY

Section 469.20 of the first notice rule states that all persons or entities that install, maintain, or repair EV charging stations shall be certified by the Commission under Part 469. The first notice rule also establishes January 1, 2014 as the initial compliance date for Part 469. None of the commenters suggested any revisions to Section 469.20 and the Commission is not otherwise aware of the need for any revisions.

IV. SECTION 469.30 APPLICATION PROCEDURES

Section 469.30 sets forth how an entity shall apply for certification under Part 469. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

V. SECTION 469.40 REQUIRED APPLICATION INFORMATION

Section 469.40 identifies the information that an entity must include in its application under Part 469.

A. ABC Position

ABC takes issue with those portions of Section 469.40 calling for the submission of employee-specific information and details about an applicant's organizational structure. ABC contends that there is no basis for doing so. ABC explains that licensed electrical contractors are currently responsible for certifying that employees are properly trained. ABC is not aware of any municipalities that require electrical contractors to submit employee names/information as part of the licensing process, as there is simply no plausible justification for such a requirement. ABC recommends that Section 469.40 simply require contractors to certify that employees have met the qualifications set forth in the law.

B. Chamber Position

The Chamber recommends striking subsection (g) from Section 469.40. The Chamber relates that it is the responsibility of the licensed contractor to ensure that employees have the necessary qualifications for the jobs they do. Local communities in Illinois do not ask for this information when licensing contractors. The Chamber states further that there is nothing in the Act that recommends or dictates this information be given.

Referring to a similar suggestion it made in Docket No. 12-0213, the Chamber notes that Staff rejected the recommendation because it believes the information is essential to Commission review of prospective installer's applications as well as ensuring that only qualified persons are performing installations. The Chamber states that it has found no other municipality that asks for similar information when licensing contractors. Those municipalities, the Chamber observes, also have a responsibility to review installer's applications and ensure only qualified persons are performing installations. For decades, the Chamber continues, these municipalities have been able to successfully fulfill its obligations without a list of employees. The Chamber states that municipalities put the burden on contractors to certify that installations will be done by qualified persons and recommends that the Commission fulfill its obligation using this method as well.

C. Staff Position

In response to ABC's concerns about the information to be provided with an application, Staff notes that an entity must demonstrate that the employees that will install EV charging stations are qualified persons. Staff contends that an applicant must furnish employee-specific information to make such a demonstration, and Staff believes such information is essential for the Commission's review of an entity's certification application. While Staff opposes the complete elimination of these requirements, Staff can, however, accept the recommendation that an applicant need not be required to provide information about its organizational structure. Thus, Staff recommends revising Section 469.40 as follows:

- f) ~~An organizational chart demonstrating the applicant's corporate structure, including all affiliated companies, if applicable.~~
- g) ~~An exhibit (with any confidential personal information such as a Social Security number redacted) containing an internal corporate organizational chart indicating the position and name of the qualified persons who will perform or directly supervise installations, maintenance and repair of electric vehicle charging stations to satisfy the requirements of this Part.~~
- h) ~~Copies of the DOL certification of satisfactory completion of a DOL-registered electrician apprenticeship program for each person whose qualifications are used to satisfy the requirements of this Part.~~

With regard to Section 16-128A(d)(12), Staff also recommends the addition of a new subsection to Section 469.40 addressing the insurance requirements of that statutory provision. The first part of Staff's new subsection requires an applicant to provide proof that it has sufficient commercial general liability insurance that includes premises and operations insurance and products and completed operations insurance in the amounts specified. The commercial general liability insurance must be

maintained with an insurance company whose Best's rating is A- or better and whose Best's financial size category is VII or larger. The second part of Staff's new subsection requires an applicant to demonstrate that it has a certificate of insurance. Staff also proposes that the certificate of insurance and the insurance policies must contain a provision that coverage under the policies shall not be cancelled, allowed to expire, or subjected to a reduction in the limits in any manner unless written notice is provided to the Commission. Section 16-128A(d)(12) permits the Commission to name the affected public utility as an additional insured. The proposed provisions do not recommend that public utilities must be named as an additional insured party. Staff's proposed new subsection reads as:

- x) An applicant shall have in force, and provide proof that it has in force, general liability insurance that shall remain in effect for a period of not less than one year.
- 1) The applicant shall be deemed to have sufficient commercial general liability insurance that includes premises and operations insurance and products and completed operations insurance, with limits of at least \$100,000 per occurrence, \$300,000 aggregate limit for bodily injury, and property damage insurance with limits of at least \$25,000 or a policy with a single limit for bodily injury and property damage of \$300,000 per occurrence and \$300,000 aggregate limits. The minimum amount of general liability insurance shall be \$300,000 for the combined property damage and bodily injury to, or death of, one or more persons in any one accident or occurrence. The commercial general liability insurance must be maintained with an insurance company whose Best's rating is A- or better and whose Best's financial size category is VII or larger, and whose contract of insurance is issued pursuant to Section 445 or 445a of the Illinois Insurance Code [215 ILCS 5/445 or 445a] and countersigned by the Surplus Line Association of Illinois or its successor.
- 2) The applicant shall provide a certificate of insurance as part of its application for certification. If the applicant or Commission-certified IMR renews or makes changes in its insurance coverage, the insurance coverage must be continuous and without interruption. The certificate of insurance and the insurance policies shall contain a provision that coverage afforded under the policies shall not be cancelled, allowed to expire, or subjected to a reduction in the limits in any manner unless at least 30 days prior written notice (10 days notice in the case of nonpayment of premium) has been given to the Commission. The IMR shall

file a copy of the additional or replacement certificate of insurance with the Chief Clerk of the Commission and provide a copy to the "Policy Division – IMR Insurance Compliance" or its successor at least 15 days in advance of the effective date of the certificate of insurance. The filing shall include a cover letter that explains the purpose of the filing and shall be identified by the name of the IMR as it appears in the most recent Commission order granting the IMR certification.

D. Commission Conclusion

With regard to the information sought through subsections (a) through (e) of Section 469.40 in the first notice rule, the Commission continues to find that this information is necessary and relevant to administration of certification under Part 469. As for subsections (f) and (g), the Commission agrees with those who question the need for this information. Consistent with Staff's recommendation, the Commission will delete the requirement to provide the information in subsections (f) and (g) of the first notice rule.

The Commission disagrees, however, with the suggestion that subsection (h) be deleted. Some level of information pertaining to those who install, maintain, or repair EV charging stations is necessary to ensure that the entity seeking certification will be using qualified persons. Due to revisions elsewhere in Part 469, the contents of subsection (h) must be revised to conform with those revisions. Accordingly, subsections (f), (g), and (h) of Section 469.40 are revised as follows:

- f) An exhibit (with any confidential personal information such as a Social Security number redacted) containing the following information for each qualified person who will perform or directly supervise installations, maintenance, or repairs to satisfy the requirements of this Part:
 - 1) A copy of the certification of satisfactory completion of the relevant training program(s); and/or
 - 2) An affidavit by each qualifying person attesting to having satisfactorily completed at least five installations of electric vehicle charging stations.
- ~~f) An organizational chart demonstrating the applicant's corporate structure, including all affiliated companies, if applicable.~~
- ~~g) An exhibit (with any confidential personal information such as a Social Security number redacted) containing an internal corporate organizational chart indicating the position and name of the~~

~~qualified persons who will perform or directly supervise installations, maintenance and repair of electric vehicle charging stations to satisfy the requirements of this Part.~~

- ~~h) Copies of the DOL certification of satisfactory completion of a DOL-registered electrician apprenticeship program for each person whose qualifications are used to satisfy the requirements of this Part.~~

Furthermore, the Commission will add as a new subsection (g) the language that Staff proposes to address the insurance requirements called for by Section 16-128A(d)(12). No one has objected to Staff's proposed language. The Commission finds the language reasonable for purposes of satisfying Section 16-128A(d)(12) and will incorporate it into Part 469.

VI. SECTION 469.50 CERTIFICATION REQUIREMENTS

Section 469.50 specifies the requirements for certification under Part 469. None of the commenters suggest any revisions to this section. Due to revisions elsewhere in Part 469, however, the contents of subsection (d) must be revised to conform with those revisions. Accordingly, subsection (d) of Section 469.50 is revised as follows:

- d) The applicant certifies that every installation, maintenance and repair of an electric vehicle charging station will be performed only by:
- 1) a qualified persons; ~~or~~
 - 2) a person who is not a qualified person, provided he/she is directly supervised by a qualified person; or
 - 3) a persons enrolled in a training program that upon satisfactory completion will meet the requirement to become a qualified person, DOL-registered electrician apprenticeship program who are provided he/she is directly supervised by a qualified person.

VII. SECTION 469.60 CERTIFICATIONS CONDITIONED UPON COMPLIANCE

Section 469.60 provides that a certified entity must comply with Part 469 and Sections 16-128(a) and 16-128A of the Act. Failure to do so may subject the entity to penalties. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

VIII. SECTION 469.70 ANNUAL RECERTIFICATION AND REPORTING

Section 469.70 requires each holder of a certificate under Part 469 to file by April 1 of each year a report certifying that they continue to meet the requirements of the Act and Part 469. Under the first notice rule, the recertification reports would also require certificate holders to provide updated information regarding their qualifications and describe the EV facilities that they installed in the prior calendar year.

A. ABC Position

For purposes of the annual recertification, ABC asserts all that is needed is for the contractor to certify that it remains in compliance with the requirements set forth in the law. ABC contends that there is no requirement for, and no discernible benefit to, the Commission collecting this large amount of data on a regular basis. In ABC's opinion, recertification is all that is required and all other proposed obligations regarding individual data should be deleted.

B. Chamber Position

The Chamber recommends deleting subsections (c)(2) and (c)(3) from Section 469.70 on the grounds that the Commission does not need to keep track of employee activity. The Chamber points out that municipalities do not ask for this information when giving contractors licenses to build skyscrapers, arenas, factories, or malls. Because this information is not asked for in the Act, the Chamber urges the Commission to remove this requirement from Part 469.

The Chamber also recommends deleting subsection (c)(5) from Section 469.70 on the grounds that it is unnecessary as it has no bearing on the qualifications of the contractor or its employees. Whether an entity conducted one or 100 installations in the previous year, the Chamber argues, has no bearing on the entity's qualifications for being approved by the Commission. This information could be "interesting" for those who want to monitor the growth of the EV market, but in the Chamber's view that is not within the Commissions purview and therefore should not be requested.

C. Staff Position

In response to the suggestions of ABC and the Chamber, Staff contends that the information required by subsections (c)(2) and (c)(3) is essential to ensure the Commission that the entity continues to allow only qualified persons to install EV charging stations. Thus, Staff does not recommend deletion of subsections (c)(2) and (c)(3) from Section 469.70. Staff, however, believes that these subsections can be improved and recommends the following revisions:

- 2) A list of all persons who installed, maintained or repaired vehicle charging stations on behalf of the certificate holder during the previous calendar year. For each person, state whether the

certificate holder provided the person's qualifications to the Commission with the certificate holder's original application or with a recertification report. If the latter, identify the relevant recertification report for each person by the calendar year which it covered and the date the certificate holder first provided each person's qualifications;

- 3) A list of all qualified persons currently employed by the certificate holder. For each person not listed in response to subsection (c)(2), state when the person began employment and provide for each such person proof of the person's qualifications consistent with Section 469.40(f); ~~A current list of qualified persons and the date the certificate holder provided supporting documentation of qualification for each person. For persons for whom the certificate holder had not previously provided documentation of qualification, the certificate holder shall provide for each person a copy of each DOL certificate of satisfactory completion;~~

Regarding subsection (c)(5), which requires the recertifying entity to report the number of charging stations that the entity installed during the previous year, Staff believes that this information will aid the Commission and the public in monitoring the EV industry in Illinois. Thus, Staff does not recommend deletion of subsection (c)(5).

D. Commission Conclusion

The Commission understands that any recertification report will impose some degree of burden on a certificate holder. The question is whether the burden imposed is reasonable in light of the need for the information. In this instance the Commission has an obligation to ensure that those who install, maintain, or repair EV charging stations are qualified. Without the information called for in the recertification reports, the Commission could not completely fulfill that obligation. The language in subsections (a), (b), (d), (e), and (f) in the first notice rule is reasonable since it is necessary for the efficient processing and utilization of any such report.

Subsection (c) is where controversy arises. The statements called for in subsections (c)(1) and (c)(4) are consistent with other recertification reports required by Commission rules and will remain unchanged. Subsection (c)(5) calls for information about any EV charging stations installed in the prior calendar year. Possession of such information is useful for assessing the pace of charging station installations in Illinois. The Commission is inclined to retain this requirement. To the extent that this represents competitive information that a certificate holder would prefer to keep confidential, the Commission points out that its Rules of Practice at 83 Ill. Adm. Code 200 provide for confidential treatment when a sufficient demonstration has been made that such treatment is warranted. As for improving subsections (c)(2) and (c)(3), Staff's comments are well taken. With the adoption of Staff's revisions, Section 469.70(c)(2) and (c)(3) will read as:

- 2) A list of all persons who installed, maintained or repaired vehicle charging stations on behalf of the certificate holder during the previous calendar year. For each person, state whether the certificate holder provided the person's qualifications to the Commission with the certificate holder's original application or with a recertification report. If the latter, identify the relevant recertification report for each person by the calendar year which it covered and the date the certificate holder first provided each person's qualifications;
- 3) A list of all qualified persons currently employed by the certificate holder. For each person not listed in response to subsection (c)(2), state when the person began employment and provide for each such person proof of the person's qualifications consistent with Section 469.40(f); ~~A current list of qualified persons and the date the certificate holder provided supporting documentation of qualification for each person. For persons for whom the certificate holder had not previously provided documentation of qualification, the certificate holder shall provide for each person a copy of each DOL certificate of satisfactory completion;~~

IX. SECTION 469.80 COMPLAINT PROCEDURES

Section 469.80 pertains to complaints relating to Part 469. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

X. SECTION 469.90 COMMISSION OVERSIGHT

Section 469.90 concerns Commission oversight of the certification process under Part 469. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

XI. SECTION 469.100 MAINTENANCE OF RECORDS

Section 469.100 requires certificate holders to agree to maintain documentation regarding installing, maintaining, and repairing EV charging stations for a period of not less than three calendar years. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

XII. SECTION 469.110 FEES

Section 469.110 of the first notice rule sets forth the fees to be collected pursuant to Part 469. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either. In the interest of clarity, however, the

Commission will comment on how it intends for late fees to be calculated. As explained by Staff in support of its first notice rule, late fees would only be applicable after a 30-day grace period; that is, fees would accumulate after April 30. The minimum fee would be \$100 and an additional fee of \$10 per day would be assessed until the report is filed (for example, a report filed on May 3 would be assessed a fee of \$130; \$100 as the minimum fee and a total of \$30 for the three days after the 30-day grace period). The Commission also takes this opportunity to remind anyone making a payment under Section 469.110 to not include in their public filing any confidential personal information such as their Social Security number.

XIII. SECTION 469.120 OBLIGATIONS OF ELECTRIC UTILITIES, IMRS, AND RETAIL CUSTOMERS

Section 469.120 of the first notice rule sets forth certain obligations of (1) electric utilities, (2) installers, maintainers, and repairers ("IMR"), and (3) retail customers concerning EV charging stations.

A. AIC Position

AIC's primary concern with the first notice rule is tied to the dual notification provisions found in Section 469.120. As currently drafted, Section 469.120 would require two sets of notifications to the utility (one from the IMR and one from the customer) for the same EV charging station installation. Specifically, AIC is concerned about receiving notification of the location of each proposed and/or installed charging station, as well as technical information related to that installation. AIC believes, however, that this concern can be addressed by timely receipt of one set of information. In AIC's experience, multiple forms containing the same information are unnecessarily redundant (increasing administrative burden) and potentially confusing. AIC would prefer the notifications come from the customer whose internal electric distribution system will serve the EV charging station.

In addition, AIC is concerned with the lack of any direct mechanism for it to enforce the utility notification requirements on either a customer or an IMR. AIC's tariffs currently provide it with the ability to disconnect any customer whose equipment is causing power quality or reliability issues; however, absent such quality or reliability issues, neither its current tariffs nor the first notice rule provide a direct mechanism for the utility to enforce or remedy lack of notification. AIC asks Staff to consider ways to encourage utility notification by whichever entity or entities continue to maintain notification responsibilities.

B. ComEd Position

ComEd proposes several revisions to Section 469.120(a) consistent with its understanding of the Act and to better define the information requirements necessary to confirm that an EV charging station IMR has obtained, and is presently, a Commission-certificated IMR. First, ComEd proposes revising the language in Section 469.120

(a)(1)(A) to specify that an installing entity provide the servicing utility with its business name, address, and phone number. ComEd believes that the revision will eliminate any ambiguity surrounding what “contact information” is necessary to present to the utility.

Second, ComEd proposes a new subsection 469.120(a)(1)(B), which requires the IMR to demonstrate that it has obtained Commission certification and is in good standing with the Commission. In this way, ComEd explains, the rule does not impose the unnecessary obligation on a utility to investigate to confirm the status of an IMR.

Third, ComEd proposes to strike Sections 469.120(a)(1)(D), (E), and (F) from the first notice rule. Instead, ComEd proposes a new Section 469.120(a)(1)(E) which requires information demonstrating that the EV charging station has been installed. ComEd contends that this proposal streamlines the information a utility will need from an IMR, and serves to demonstrate that the work has been completed.

Fourth, ComEd proposes to strike Section 469.120(a)(2)(C) from the first notice rule. ComEd asserts that this proposal streamlines the information a utility will need from an IMR. Additionally, in Section 469.120(a)(2)(D) of the first notice rule, ComEd proposes adding the language that the IMR be in good standing with the Commission. In this way, as discussed above, ComEd believes that the rule does not impose the unnecessary obligation on a utility to investigate to confirm the status of an IMR.

Fifth, ComEd proposes amending Sections 469.120(a)(3) and (a)(4) to conform to the requirements of Section 16-128A(d) of the Act. As currently drafted, these sections impose an obligation on utilities to maintain documentation that a customer self-installer or an IMR meets the requirements of the rule. ComEd contends that the obligation to maintain documentation pursuant to Sections 469.120(a)(3) and (a)(4) is properly placed on the customer self-installer or the IMR, and not the utility.

C. Staff Position

In response to AIC's concerns about redundant notifications, Staff observes that Section 16-128A(d) sets forth the notification requirements. That section reads in part as follows:

All retail customers who own, maintain, or repair an electric vehicle charging station shall provide the servicing electric utility (i) a certification that the customer installing the electric vehicle charging station was a self-installer or (ii) evidence that the electric vehicle charging station was installed by an entity certified under this subsection (d) that is also in good standing with the Commission. ... If the electric vehicle charging station was not installed by a self-installer, then the person or entity that plans to install the electric vehicle charging station shall provide notice to the servicing electric utility prior to installation and when installation is complete and provide any other information required by the Commission's rules established under subsection (d) of this Section. An electric utility

shall file a tariff or tariffs with the Commission setting forth the documentation, as specified by Commission rule, that a retail customer who owns, uses, operates, or maintains an electric vehicle charging station must provide to an electric utility.

Staff understands that Section 16-128A(d) requires both the IMR and retail customers to provide certain information to the servicing utility. Thus, Staff does not support AIC's recommendation.

As for AIC's enforcement concern, Staff points out that Section 469.150(b)(5) of the first notice rule requires an applicant to certify that it will "Submit notifications to the servicing electric utility in accordance with the requirements specified in the applicable tariffs of the servicing electric utility, Section 16-128A of the Act, and this Part." Additionally, Staff notes, Section 469.90 informs certificate holders that the Commission may investigate violations of the rule. Furthermore, Section 469.60 states that violation of the rule or the Act "make[s] the IMR subject to penalties, including certificate suspension, revocation, fines, or a combination of sanctions." In light of these provisions, Staff believes that there is sufficient incentive to ensure compliance.

With regard to ComEd's proposed revisions to Section 469.120(a), Staff is agreeable to ComEd's first, second, and fourth revisions as set forth above. Staff does not oppose that part of ComEd's third suggestion to eliminate Section 469.120(a)(1)(D) because it agrees with ComEd that it is reasonable to find that the requirement that the IMR notify the utility of the location of the installation would satisfy the statutory requirement of notification prior to installation. Similarly, with regard to ComEd's proposal to eliminate Section 469.120(a)(1)(E), Staff finds reasonable ComEd's belief that the proposal that the IMR furnish an invoice would satisfy the statutory requirement that the installation was completed. Staff therefore does not oppose the recommendation to eliminate Sections 469.120(a)(1)(D) and (E). Staff, however, does not support that part of ComEd's third proposal calling for the elimination of Section 469.120(a)(1)(F). Without the name of the qualified person as called for in subsection (F), Staff doubts that it would be able to ensure that only qualified persons worked on EV charging stations. Staff also objects to ComEd's fifth proposal to revise Sections 469.120(a)(3) and (a)(4), which require the utility to maintain records for no less than three years after installation. Because Section 469.100 requires certificate holders to retain installation records for at least three years, Staff states that installation information should be available to the Commission and Staff as long as the certificate holder remains in business. But Staff observes that the issue here is whether imposing the retention requirement on utilities is unreasonable. Staff is doubtful that requiring electric utilities to retain this information would be unduly burdensome, and therefore, opposes the recommendation.

D. Commission Conclusion

With regard to AIC's comments, the Commission has considered the suggestion that the retail customer be the single entity that provides information to the utility, rather

than the utility receiving nearly the same information from both the retail customer and IMR. Clearly, and logically, the retail customer has an obligation to provide information to the utility. Less clear is whether the IMR has such an obligation. Staff understands the phrase "the person or entity that plans to install the electric vehicle charging station shall provide notice" in Section 16-128A(d) to mean that the IMR has an obligation to provide information directly to the utility. In the interest of simplicity and practicality, however, the Commission believes it is reasonable to implement this language through the retail customer. A utility created form available to the retail customer can call for information regarding an IMR and an EV charging station. Retail customers are certainly free to seek particular information from the IMR and include that information on the form submitted to the utility.

As for AIC's enforcement concerns, revising the rule such that the retail customer has the notification obligation nullifies Staff's response to AIC's concerns. The record is silent on ways to ensure compliance by retail customers. But whether compliance by retail customers will be a problem is not known. Rather than attempt to invent from outside of the record a solution to a problem that may not even manifest, the Commission will defer action on this issue until action is warranted.

ComEd presents a different set of suggestions, the adoption of some of which will lessen the obligations on those involved. ComEd first suggests that the "contact information" for the IMR called for in Section 469.120(a)(1)(A) be identified as the IMR's business name, address, and phone number to avoid ambiguity. The Commission concurs with the suggestion and adopts it.

ComEd's second suggestion is to add a new Section 469.120(a)(1)(B), which requires the IMR to demonstrate that it has obtained Commission certification and is in good standing with the Commission. Specifically, ComEd proposes the following language:

- B) evidence demonstrating that the IMR has been certified by the Commission and that the IMR is in good standing with the Commission;

While the Staff supports the language proposed by ComEd, the Commission finds the language unclear because it is not clear exactly how the IMR would demonstrate that it is in good standing with the Commission. To remedy this, the Commission believes it is reasonable to require the docket number in which the IMR obtained a certificate from the Commission. Further evidence of an IMR being in good standing is not necessary, as a list of current certificate holders under Part 469 will be maintained on the Commission's website. This conclusion is consistent with the findings in the Second Notice Order in Docket No. 12-0213.

ComEd next proposes to delete Sections 469.120(a)(1)(D), (E), and (F) and add new language which requires information demonstrating that the EV charging station has been installed. Staff does not object to the deletion of subsections (a)(1)(D) and (E)

and inclusion of the new language proposed by ComEd, but Staff opposes deleting subsection (a)(1)(F). Staff contends that it will not be able to ensure that installations are performed by qualified persons if the information called for in subsection (a)(1)(F) is not provided to the utility. The Commission concurs that the deletion of subsections (a)(1)(D) and (E) is appropriate. The Commission also finds ComEd's new requirement following the installation of an EV charging station reasonable and will adopt it. How providing the identity of the qualified person who installed an EV charging station to the utility will help Staff monitor the installation of charging stations, however, is unclear to the Commission. Unless Staff requested and reviewed every notice submitted to each utility, it is not clear how subsection (a)(1)(F) would help Staff ensure compliance with the Act and Part 469. Given other commitments from IMRs required in Part 469, the Commission is inclined to agree with ComEd and finds the requirement in subsection (a)(1)(F) unnecessary.

In response to ComEd's fourth suggestion, to strike Section 469.120(a)(2)(C), the Commission concurs with Staff that doing so is reasonable and appropriate. With regard to that part of ComEd's fourth suggestion to add language to Section 469.120(a)(2)(D) concerning the good standing of an IMR, the Commission has already addressed this concern in the discussion of Section 469.120(a)(1)(B). The changes ComEd seeks in this respect are not warranted.

ComEd's final suggestion is to revise Sections 469.120(a)(3) and (a)(4) by placing the burden on retail customers and IMRs to maintain records of EV charging station installations and conversions, rather than on the utility. Staff contends that placing the burden on utilities is reasonable and opposes the proposed revisions. The Commission has considered the comments and does not see sufficient reason to burden utilities with this requirement. As Staff notes, Section 469.100 already requires IMRs to maintain documentation regarding installations, maintenance, and repairs of EV charging stations for three years. Section 469.100 also directs that the records be made available to the Commission and Staff whenever requested. Accordingly, Section 469.120 will be revised to place the record retention burden on IMRs and retail customers.

In light of the above conclusions, Section 469.120 in the second notice rule should be deleted in its entirety and replaced with the following:

- a) Each electric utility shall file a tariff or tariffs with the Commission setting forth the documentation that each retail customer who owns, uses, operates or maintains an electric vehicle charging station in the electric utility's service territory must provide to an electric utility. The electric utility's tariffs shall require the following information from retail customers:
 - 1) The name, address, and electric utility account number of the retail customer who owns, uses, operates, or maintains the electric vehicle charging station(s);

- 2) The location of the electric vehicle charging station(s);
 - 3) When an electric vehicle charging station is to be installed by an IMR, the business name, address and phone number of the IMR that is the certificate holder;
 - 4) When an electric vehicle charging station is to be installed by an IMR, the Commission docket number in which the IMR obtained a certificate from the Commission;
 - 5) The load and technical specifications of the charging station(s);
 - 6) Whether the charging station is for personal or commercial use; and
 - 7) Upon completion of the installation of an electric vehicle charging station, a certification that the electric vehicle charging station was installed by the retail customer as a self-installer, or a copy of the invoice for the installation services or other information demonstrating that the designated IMR installed the electric vehicle charging station.
- b) Retail Customers shall comply with the following:
- 1) Prior to installation of an electric vehicle charging station, the retail customer shall provide notice in writing to the servicing electric utility of plans to install an electric vehicle charging station; said notice shall include the information specified in subsections (a)(1) through (a)(6);
 - 2) Within 30 days after the installation date, the retail customer shall submit to the servicing electric utility the information specified in subsection (a)(7);
 - 3) If a retail customer self-installs an electric vehicle charging station and elects to convert the electric vehicle charging station from personal use to commercial purposes, then the retail customer shall take the following actions:
 - A) Have a Commission-certified IMR inspect the electric vehicle charging station to evaluate the adequacy and safety of the electric vehicle charging station and

provide the results of the inspection to the servicing electric utility; and

B) Provide notice to the servicing electric utility at least 30 days in advance of the customer's plans to use the electric vehicle charging station for commercial purposes;

4) Each retail customer that installs an electric vehicle charging station, whether as a self-installer or through an IMR, shall ensure that documentation regarding the installation is retained for a period of not less than three calendar years after the calendar year in which the installation occurred; and

5) Each retail customer that self-installs an electric vehicle charging station shall ensure that documentation regarding conversion of self-installed electric vehicle charging stations to commercial use is retained for a period of not less than three calendar years after the calendar year in the conversion occurred.

c) Electric Vehicle Charging Station Installers, Maintainers and Repairers shall comply with the following:

1) Each IMR that installs an electric vehicle charging station shall ensure that documentation regarding the installation is retained for a period of not less than three calendar years after the calendar year in which the installation occurred; and

2) Each IMR involved in the inspection of a self-installed electric vehicle charging station converted to commercial use shall ensure that documentation regarding the conversion is retained for a period of not less than three calendar years after the calendar year in which the inspection occurred.

XIV. SECTION 469.130 INITIAL COMPLIANCE DATE

Section 469.130 of the first notice rule establishes an initial compliance date of January 1, 2014. None of the commenters suggest any revisions to this section. The Commission sees no need for revisions either.

XV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (2) the recitals of fact and legal argument identified as the parties' respective positions are supported by the record;
- (3) the statements of fact and conclusions of law reached in the Commission conclusions are hereby adopted as findings of fact and conclusions of law for purposes of this Second Notice Order; and
- (3) the proposed rule at 83 Ill. Adm. Code 469, "Certification for the Installation, Maintenance or Repair of Electric Vehicle Charging Stations," as reflected in the attached Appendix, should be submitted to JCAR to begin the second notice period.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed rule at 83 Ill. Adm. Code 469, "Certification for the Installation, Maintenance or Repair of Electric Vehicle Charging Stations," as reflected in the attached Appendix, be submitted to the Joint Committee on Administrative Rules, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that this Second Notice Order is not final and is not subject to the Administrative Review Law.

DATED: March 14, 2013.

Briefs on Exceptions must be received by March 28, 2013.

Briefs in Reply to Exceptions must be received by April 4, 2013.

John D. Albers
Administrative Law Judge